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# Sharing the Wealth

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## FROM THE READING ROOM

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### Sharing the Wealth

*James J. Kelly Jr.*

*Community Economic Development Law: A Text for Engaged Learning*  
Susan Bennett, Brenda Bratton Blom, Louise Howells, and Deborah Kenn  
Durham: Carolina Academic Press, 2012  
448 pp./\$60 paper

At the outset of their new law school course book, *Community Economic Development Law: A Text for Engaged Learning*, Professors Susan Bennett, Brenda Bratton Blom, Louise Howells, and Deborah Kenn create a richly detailed urban landscape filled with institutions and persons who navigate a wide array of legal and financial challenges as they make their way through a fictional world. More miniseries than major motion picture, the backstory of the Milkweed Park neighborhood would itself be worth a 400-page book were it not put to more practical use as the context for a variety of walkthroughs and simulations designed to educate the veteran law student/neophyte lawyer in the many facets of the law relating to community development.

Even settling on the list of subjects that fill out the scope of community economic development law is no simple chore. The authors make no claims of perfect comprehensiveness for the five specialty areas that give the book its basic structure. Legal Organizational Structures is first in every way someone who teaches transactional law in the community development setting can imagine, with the likely exception of engendering student excitement. The other four—Economic Development, Land Use Policies, Affordable Housing, and Community Justice—represent the richness of not only community economic development law itself but also the insights and innovations that these four authors have contributed over the course of their legal and academic careers. As fundamental as these four areas are now to community development lawyering, they have become

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so, to some extent, as the areas of expertise of these four influential community development lawyers.

At the end of the book's first chapter, these veteran teachers tell their readers how they expect the book to help them learn community economic development law. By situating lawyering tasks and projects in such a vividly illustrated simulation, the book seeks to make substantive law real to the student. The authors also provide sophisticated simulations that call upon students to practice transactional lawyering skills. Frequently, they introduce or review an area of law in much the same way a treatise or an article in a bar journal might. These segments posit some form of business activity and explain how the relevant legal doctrine encourages, restricts, and creates or limits uncertainty for that part of the venture. Just as frequently, the book follows such an explanation with a hypothetical using a Milkweed Park character and a brief exercise that asks the student to provide some form of legal advice. Sometimes, however, the walkthrough of the basic legal doctrine will itself relate the choices facing a particular person or organization in Milkweed Park or some other part of the book's fictional urban center, Ourfuture City.

When Patrick Mulligan wants to access capital markets to expand his family's asphalt production business to a site in Milkweed Park, the authors set up a tour of various federal securities requirements by providing specific information about how much money he needs to raise and his potential investors.<sup>1</sup> For a clinic student representing an actual client wishing to sell stock in its company, reading the five pages that discuss two SEC regulations, which in turn implicate four different SEC rules, may not substitute for the student's study of a formal treatise on the subject, much less a careful examination of actual text of those rules, regulations, and the underlying statute. But there is no doubt in my mind that, having read about several possibilities for Mulligan Asphalt, Inc. being completely exempt from federal registration requirements and the limitations that come with those exemptions, students will be better able to put together the legal knowledge they have acquired from primary and more formal secondary sources.

Since the book focuses on helping new community development lawyers get a handle on the incredibly vast array of substantive law needed to assist community-based ventures, it is not at all surprising that the main lawyering skill that the exercises facilitate is the provision of legal advice. Drawing up documents of legal effect, whether bylaws, contracts, or deeds, requires not only substantive knowledge of the law but also attention to clients' risk management preferences and the mechanics of drafting. The latter in particular is clearly beyond the scope of the book. Even the task of preparing an interview checklist based on substantive

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1. SUSAN BENNETT, BRENDA BRATTON BLOM, LOUISE HOWELLS & DEBORAH KENN, *COMMUNITY ECONOMIC DEVELOPMENT LAW: A TEXT FOR ENGAGED LEARNING* 113–20 (2012).

legal research is better learned in conjunction with the various organizational and listening skills involved in conducting a client interview. Many of the client counseling exercises do not attempt to go far beyond the substance of the lawyer's advice on the particular matter. Teachers using the book can take these exercises and enhance them with questions about how and to whom the lawyer would provide the advice.

Of course, many aspects of transactional lawyering do not involve the core skills of interviewing, counseling, drafting, and negotiating. The Mulligan Asphalt exercise asks students to form alternative courses of action in case the client rejects a seemingly simple, albeit somewhat limiting approach, of selling securities to a small group of knowledgeable investors. Other hypotheticals ask students to apply the legal information they have just learned by mapping out all the steps they would need to complete to carry out the representation. Still other questions bring in client identification and other ethical concerns. Even as a secondary objective, *Community Economic Development Law* provides a strong platform for skills training.

The wealth that the four authors so generously share is their knowledge not just of corporate, public subsidy, real estate, and dispute resolution law and policy but also a real-world view of how a typical American city has shaped and been shaped by these policies. A thirty-page prologue provides the reader with the basic facts about Milkweed Park and the several dozen people, groups, and agencies that appear and reappear in the many hypotheticals that follow. When I first struggled with how to introduce my clinic students to the decades of growth, decline, and struggle that have shaped American urban neighborhoods, I considered having them read all 400 pages of *City Politics* by Todd Swanstrom and Dennis Judd.<sup>2</sup> *Community Economic Development Law's* 150-year history of the fictitious Milkweed Park, a nineteenth-century mill town annexed by the then-growing Ourfuture City, makes for an engaging narrative that conveys the essential story of America's older cities in fifteen pages. Since my clinic teaching career began in Baltimore, the perhaps not-so-coincidental resemblance between Milkweed Park and the neighborhoods we served would have been all the more appealing. But Milkweed Park is truly an every-neighborhood since disinvested urban communities across the United States and the groups working to rejuvenate them have a great deal in common.

Just as the prologue effectively gives the historical context that students practicing in urban communities need, the first two chapters on community lawyering and corporate structures provide the practice basics for transactional lawyering on behalf of start-up ventures. The text takes an appropriately light hand with lawyering theory and moves on to the entity options available to small businesses, community advocates, and

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2. TODD SWANSTROM & DENNIS JUDD, *CITY POLITICS* (8th ed. 2012).

social entrepreneurs. The book's lack of form documents reflects an appropriate economy of space but also the core difficulty of writing a state and local government law book that has to cross jurisdictional lines. The authors confront this challenge by devoting a great deal of attention to relevant federal standards and bringing in discussion of widely adopted uniform laws as appropriate. This approach works particularly well in later chapters that introduce readers to the intricacies of federal funding programs such as the Community Development Block Grant or the Low Income Housing Tax Credit. The book also help students transfer their previous understandings of Constitutional provisions, such as the Takings Clause, and put them to work in the context of local regulations and client objectives.

As exhaustive as *Community Economic Development Law's* treatment of relevant legal doctrine appears, the authors have clearly made choices as to what they present. Although many of the nonprofits and businesses presented as clients have employees, the authors elected not to include a section on employment law issues, even though the distinction between employees and independent contractors, which students often find a challenge to relate and apply in a client representation, is largely a matter of federal tax law. Easier to understand is the decision not to devote significant space to licensing of business activities. The book better references this state-by-state and business-by-business area of the law in an exercise involving the formalizing of a day care center operated by a local church.<sup>3</sup>

Even as it openly sets limits to its own substantive contributions, the book draws upon ten additional contributors to briefly review a host of interesting subjects from HOPE VI and microenterprises to the special concerns of youth and immigrant entrepreneurs. These articles, like many sections of the book, work quite well as stand-alone readings. Some subjects, such as the tax treatment of for-profit entities, present coverage challenges. Rob Nassau provides a helpful and accessible overview of the tax treatment option available to small businesses.<sup>4</sup> In addition to the pass-through versus double-taxation alternatives students may already know something about, Nassau also mentions the less-well-known difference between the two pass-through taxation options in the imposition of payroll taxes on owner income.<sup>5</sup> It is difficult to avoid treating any of these complex subjects without allowing your readers to head down the wrong road. Here, the explanation that an S-corporation shareholder pays Social Security and Medicare taxes only on the salary portion of its income could leave the student with the wrong impression that the S-corporation principals get to decide how much tax to pay. In fact, the IRS requires that

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3. BENNETT ET AL., *supra* note 1, at 65.

4. *Id.* at 92–98.

5. *Id.* at 98.

salaries paid to shareholders meet or exceed a reasonable minimum given the value of the services they provide.<sup>6</sup>

The enormous challenge of bringing a diverse and complex body of substantive law to developing practitioners is extremely well met in this tremendously helpful resource. I strongly encourage teachers of clinics and simulation courses to review this book for adoption. The contextual details presented in the prologue grow and develop throughout the book. A pocket inside the back cover includes a full-color map of Milkweed Park. An afterword paints hopeful images of Ourfuture City in 2050 (*spoiler alert*: one of the two day-care entrepreneurs you advise earlier in the book goes on to become Mayor Blackwell). As community development clinics take hold and grow throughout the legal academy, it is vitally important that we have texts like *Community Economic Development Law* that show as well as tell what it means to share the wealth.

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6. Rev. Rul. 74-44.

